

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

1. The petitioner resides with her husband and three children. They comprise a five person food stamp household.
2. Petitioner's husband became employed on or about August 18, 2005. Petitioner reported the change in income within ten days.
3. The Department entered the wage information for petitioner's husband into the Department's records for September and October 2005 and used this information in determining the amount of petitioner's Food Stamps for September and October 2005. The Department then stopped entering the data for the husband's wages into their system

until February 16, 2006. As a result, the Department miscalculated petitioner's Food Stamps.

4. At all times relevant to this case, petitioner has met her obligations to keep the Department informed of the income in her household including her husband's wages.

5. During June 2006, the Department received from the Department of Employment and Training an employment match showing that the petitioner's husband was employed from August 19, 2005 through May 18, 2006. The information was processed by the Quality Control/Fraud/Claims Unit (QC unit) because the Department assumed that petitioner had failed to report this income.

6. The Food Stamp overpayment period ran from November 1, 2005 through February 28, 2006.

7. On August 24, 2007, D.H., QC unit investigator, sent petitioner a letter informing petitioner that due to the department's failure to include her husband's income, her household had been overpaid \$1,266 in Food Stamps and that she needed to repay the Food Stamp overpayment. Petitioner was informed that she would receive a separate notice from the Department explaining how the overpayment would be recouped from her current Food Stamps. Petitioner's caseworker C.Z. sent petitioner a Notice dated August 30,

2007 confirming that petitioner had been overpaid \$1,266 in Food Stamps due to agency error.

8. Petitioner requested a fair hearing on or about August 30, 2007.<sup>1</sup>

9. An evidentiary hearing was held on September 27, 2007. Petitioner was upset because she thought the involvement of the QC unit meant that her records would indicate fraud; she did not understand that the Department based the overpayment on agency error. Petitioner did not dispute the wage information used by the Department in recalculating the correct amount of Food Stamps.

10. D.H. testified regarding the calculations to determine the correct amount of Food Stamps for the overpayment period. To determine the correct amount, the Department used the bi-weekly wage information from the husband's employer. The Department applied the 20 percent earned income disregard to the husband's wages and added that figure to the household's unearned income. They then applied the standard deduction and the allowable shelter deduction. The Department calculated an overpayment of \$1,266.

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<sup>1</sup> The fair hearing process stops the Department from recouping the overpayment from petitioner's present Food Stamps until the conclusion of this process. Because the overpayment is due to agency error, the Department will be limited to recouping the overpayment to 10 percent of petitioner's present Food Stamps or \$10, whichever figure is higher.

11. During the hearing, the Department was requested to determine if the overpayment could be compromised or reduced. In a memo dated October 22, 2007, the Department stated they could not compromise the overpayment because the household had sufficient income to repay the overpayment within three years.

ORDER

The Department's decision that an overpayment of \$1,266 exists due to agency error is affirmed.

REASONS

The Food Stamp program was created to combat hunger and malnutrition among low income households. Food Stamp Manual (FSM) 271.1. The Department determines the amount each household receives in Food Stamps by calculating the household's countable income after applying applicable deductions. FSM 273.10.

In petitioner's case, the Department made an error and did not include all the household income when determining the amount of petitioner's Food Stamps for the months of November 2005 through February 2006. The Department's error led to an overpayment of Food Stamp benefits during that time period.

The Department is charged with calculating the amount of the overpayment and collecting the overpayment from the Food Stamp household even if the overpayment is caused by agency error. FSM 273.18.

In petitioner's case, the petitioner complied with her reporting requirements. The overpayment in petitioner's case was caused by agency error. Although it may be difficult for petitioner to understand why she needs to repay the overpayment when the Department was at fault or questions the fairness of the regulations, the regulations mandate the Department to collect the overpayment.

Once the Department determines that an overpayment exists, the Department needs to calculate the amount of the overpayment by subtracting the correct amount of Food Stamps from the amount of Food Stamps received by the household. In agency error cases, the Department must apply the 20 percent earned income disregard in addition to other applicable deductions allowed under the regulations. FSM 273.18(c).

The Department applied the 20 percent earned income disregard, the standard deduction, and the shelter deduction to determine the correct of Food Stamps for the months in question. Upon a review of the Department calculations, the

Department accurately calculated the Food Stamp overpayment of \$1,266.

The remaining question was whether the Department could compromise or reduce the Food Stamp overpayment. The federal Food Stamp regulations allow states to "compromise a claim or portion of a claim if it can be reasonably determined that a household's economic circumstances dictate that the claim will not be paid in 3 years". 7 C.F.R. § 273.18(e)(7). Vermont has opted to compromise overpayments. FSM 273.18(e)(7).

States that opt to compromise claims are given latitude by the federal government regarding how they make their compromise determinations.<sup>2</sup> The Vermont regulation does not detail how to determine whether to compromise a claim. The Department has adopted an internal procedure at P-2540B4 to use in making determinations.

Under this procedure, all households are determined to be able to pay an amount equal to 10 percent of the monthly statewide "Thrifty Food Plan" (TFP) amount for their family size multiplied over three years. The Department then takes

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<sup>2</sup> Some states use different treatment for overpayments due to agency error versus overpayments caused by inadvertent household error. Some states apply a more generous formula than Vermont. Vermont's current practice makes it unlikely that overpayments will be compromised.

10 percent of this amount and multiplies the figure by thirty-six months to determine the three year affordability figure. If the affordability figure is greater than the overpayment, the Department concludes that the household can repay the overpayment within three years and finds the household ineligible for a compromise of the overpayment.

In petitioner's case, the Department started with the TFP of \$615 per month (using the TFP in effect when the request was made) and applied their formula. The resulting affordability figure is \$2,214 which is greater than the overpayment of \$1,266. As a result, the Department did not compromise the overpayment.

Based on the regulations and underlying facts, the Department's decision to assess an overpayment of 1,266 caused by agency error should be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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